IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2566 OF 2004

Prashand M. Chavan ... Petitioner

versus

State of Maharashtra ... Respondent

...

Mr. Samir A. Vaidya, for the Petitioner.

Mr. V.B. Konde Deshmukh, A.P.P., for the State.

Mr. Harshad Bhadbhade for the complainant.

...

CORAM : A.M.KHANWILKAR,J.

20th January 2005

P.C.:

1. Heard Counsel for the parties. The Petitioner has approached this Court on the sole argument that there was absolutely no material before the Court to frame charge under section 498A read with section 34 and 302, or, for that matter, 304-B of the Indian Penal Code. There is no substance in this submission. I find no reason to depart from the conclusion reached by

the Court below in framing the said charges. Insofar as charge of offence under section 498A is concerned, that can be spelt out from the contents of the F.I.R., statement of the father of the deceased and the note left behind by the deceased, who was anticipating the possibility of being murdered. Insofar as charge under section 302 is concerned, the same is spelt out from the post mortem report, amongst others, which refers to the other injuries suffered by the deceased as described in Column No. 18 and certifying that the said injuries are ante mortem injuries. Besides, prosecution is also relying on the statement of Bhavna Rathod, who was the neighbour and the circumstances which can be discerned from her statement to point finger at the conduct of the Applicant having committed offence under section 302. Prosecution is also relying on the spot panchnama to support the charge of section 302 of the Code. Counsel for the Applicant, however, submits that the injuries sustained by the deceased can be explained for having been inflicted while the deceased was undergoing treatment at the hospital. This submission does not commend to me. That argument cannot be the

basis for taking the view that there is no material to frame the charge for offence under section 302 of the Indian Penal Code. The argument as canvassed on behalf of the Petitioner at best would be relevant for the trial being defence of the Applicant. As there is material to support framing of charge under section 498A and 302, no fault can be found with the trial Court for having framed charge also under section 304-B of the Indian Penal Code. No interferene is warranted in exercise of writ jurisdiction at this interlocutory stage. Dismissed.

2. At this stage, Counsel for the Applicant prays for stay of operation of the order passed by the Court below. I see no reason to accede to this request. That request is, therefore, rejected.

(A.M.KHANWILKAR,J.)